

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSE LUIS ESPINOSA-ALMONTE.	:	CIVIL NO. 1:12-CV-2514
	:	
Petitioner	:	(Judge Rambo)
	:	
v.	:	(Magistrate Judge Blewitt)
	:	
MARY SABOL, et al.,	:	
	:	
Respondents	:	

MEMORANDUM

Before the court is a report and recommendation of Magistrate Judge Blewitt (Doc. 10), to whom this matter was referred, in which he recommends that Espinosa-Almonte's petition for writ of habeas corpus be denied. No objections to the report and recommendation have been filed.

Espinosa-Almonte is a detainee of the Bureau of Immigration & Customs Enforcement (ICE), confined at York County Prison. One of the issues addressed by the magistrate judge is Petitioner's challenge to the duration of his detention under *Zadvydas v. Davis*, 533 U.S. 678 (2001). The initial history of Petitioner's custody status is clearly set forth in the report and recommendation of the magistrate judge. (Doc. 10 at pp. 3-6.) Petitioner was taken into custody on September 2, 2011. (*Id.* at p. 4). At the time of the filing of the report and recommendation, the record reflected that Petitioner's last scheduled hearing before the immigration court was January 7, 2013. By order dated July 17, 2013 (Doc. 11), Respondents were directed to file a report on Petitioner's status. On July 25, 2013, Respondents timely filed the status report. (Doc. 12.)

At the time of the filing of the report and recommendation, the magistrate judge noted that “Petitioner Espinosa-Almonte has requested eight continuances, has requested hearings be adjourned to gather more information, and has changed counsel several times, . . .” (Doc. 10 at p. 16.) On February 12, 2013, Petitioner appeared before the immigration court with counsel. (Doc. 12 at p. 1.) The immigration judge was served with Petitioner’s asylum application and proof of a U-visa filing. (*Id.*) The immigration judge adjourned the proceedings until May 2, 2013. (*Id.*) The May 2, 2013 hearing was continued because Petitioner’s attorney was not available. (*Id.* at p. 2.) The hearing was rescheduled to May 16, 2013. (*Id.*) On that date, counsel was not available. The hearing was then scheduled for June 10, 2013. Counsel was not available on that date. (*Id.* at p. 3.) The immigration judge scheduled a hearing on the asylum application for July 5, 2013. No counsel appeared for Petitioner on that date and the case was continued to August 12, 2013. (*Id.* at pp. 3-4.)

While Petitioner has been in ICE custody for almost two years, the inordinate delays can mostly be attributed to Petitioner. After careful review of the facts and applicable law, the court will adopt the report and recommendation. An appropriate order will be issued.

s/Sylvia H. Rambo
United States District Judge

Dated: July 26, 2013.

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ORDER

In accordance with the accompanying memorandum, **IT IS HEREBY ORDERED THAT:**

- 1) The court adopts the report and recommendation of Magistrate Judge Blewitt.
- 2) The petition for writ of habeas corpus is denied without prejudice to file a petition raising the duration of his detention under *Zadvydas v. Davis*, 533 U.S. 678 (2001), for delayed detention not attributed to him.
- 3) The Clerk of Court shall close the file.

s/Sylvia H. Rambo
United States District Judge

Dated: July 26, 2013.